SARAWAK SHELL BHD.

v.

PPES OIL & GAS SDN. BHD. & ORS.

HIGH COURT SABAH & SARAWAK, MIRI
TUAN RICHARD MALANJUM J
[ORIGINATING SUMMONS NO: MR (24) 25 OF 1996]
4 SEPTEMBER 1996

ARBITRATION: *Arbitration clause invoked by defendant - Plaintiff seeking order pursuant to s. 25(2) of Arbitration Act 1952 that arbitration agreement shall cease to have effect and for revocation of arbitrator's appointment - Preliminary objection by defendant - Whether s. 34(1) precludes jurisdiction of the Court from hearing plaintiff's application.*

ARBITRATION: *Arbitration Act 1952, s. 34(1) - Interpretation of - Whether s. 34(1) applicable where conduct akin to fraud as defined under s. 25(2) alleged - Whether word 'arbitration' in s. 34(1) should be given a restricted interpretation - Whether s. 34(1) only excludes the supervisory function of Court - Whether inherent jurisdiction of Courts ousted by s. 34(1).*

ARBITRATION: *Arbitration Act 1952, ss. 25(2) & 34(1) - Whether s. 25(2) being of a specific nature and enacted earlier prevails over s. 34(1) - Presumption against ousting jurisdiction of Court unless clearly stated in statute and against interfering with citizen's right of access to Courts - Whether presumption applicable.*

The parties entered into a contract whereby the defendants agreed to construct certain facilities for the Bintulu Onshore Facilities Expansion Project ('the Project'). The Project was completed after an extension was granted and the defendants were paid upon a revision of the original price. Subsequently, the defendants claimed an additional sum which was disputed by the plaintiff. The defendants then issued a notice of arbitration pursuant to Clause 28(6) Part 2 of the contract and served the same on the plaintiff. A copy of the said notice and statement of claim which contained allegations of improper conduct by the plaintiff were also filed with the Kuala Lumpur Regional Centre for Arbitration ('the Centre') and an arbitrator was duly appointed.

As a result, the plaintiff filed an originating summons for orders pursuant to s. 25(2) of the Arbitration Act 1952 ('the Act') and the inherent jurisdiction of the Court, *inter alia* that the arbitration agreement set out in Clause 28(6) shall cease to have effect and that leave be granted to revoke or suspend the appointment of the defendants' arbitrator. The defendants raised a preliminary objection that s. 34(1) of the Act precluded the jurisdiction of the Court to hear the plaintiff's application and that the United Nations Commission

on International Trade Law and Arbitration Rules 1976 ('the UNCITRAL Rules') should provide the forum and mode for the plaintiff to present its grievances.

Plaintiff's Counsel submitted that firstly, s. 34(1) of the Act could not be applied when a party has been alleged to have acted in a way akin to fraud as defined under s. 25(2) of the Act. Secondly, the meaning of the word 'arbitration' in s. 34(1) of the Act should be restricted to an arbitration which has been properly referred to the Centre and, in view of the allegation of improper conduct, such a matter is not fit for trial before an arbitrator but before a High Court Judge. Thirdly, s. 34 of the Act only excludes the supervisory function of the Court under the Act or under any other written law but does not deprive a party from seeking the aid of the Courts to avail itself of any common law right. Counsel argued that the present application would not involve the exercise of the supervisory function of the Court as it was for an order that the arbitration agreement shall cease to have effect and, once the order is granted, the arbitration proceedings would end and the UNCITRAL Rules and the rules of the Centre would be irrelevant. Counsel also submitted that s. 25(2) of the Act, being enacted earlier than s. 34(1) of the Act and being of a more specific nature, should prevail over s. 34(1). Furthermore, there was a presumption against the ousting of the Court's jurisdiction unless clearly stipulated in a statute and against interfering with a citizen's access to the Courts. Finally, Counsel contended that s. 34(1) of the Act did not oust the inherent jurisdiction of the Courts.

Held:

[1] On a literal interpretation, s. 34(1) of the Act expressly excludes the application of any of the provisions of the Act in any arbitration held under the Convention as stipulated therein or the UNCITRAL Rules and the rules of the Centre. In the present case, it is clear that Clause 28(6) of the contract stipulates the governing rules and the place of arbitration, namely the UNCITRAL Rules as applied by the Centre and to be held in Kuala Lumpur. Thus, s. 34(1) is applicable and it is plain that s. 25(2) should be excluded.

[2] To say that the reference to the Centre in this case has become irregular due to the allegations of conspiracy and improper conduct and thus s. 25(2) of the Act applies – would be tantamount to circumventing the effect of s. 34(1) of the Act. If s. 34(1) of the Act applies, in the first place, then there is no longer any question of referring to the other provisions of the Act.

[3] The Court cannot agree with the argument that the word 'arbitration' in s. 34(1) should be given a restricted meaning. Whether or not an arbitration has been properly referred to the Centre should initially depend on the terms of the arbitration clause itself. After all, it is beyond question that

an agreement to arbitrate is to be treated on no different a footing from any other contract.

[4] The plaintiff attempted to make a distinction between the supervisory function of the Court and the present application. But as the provisions of the Act are excluded in any arbitration which includes s. 25(2) of the Act, the question as to the nature of the Court's function under s. 25(2) of the Act does not arise. There is also nothing in s. 34(1) of the Act or in the whole Act implying the different functions of the Court towards arbitration proceedings.

[5] On the issue of the presumptions, the Court agrees with Zakaria Yatim J in *Klockner Industries-Anlagen GmbH v. Kien Tat Sdn. Bhd. & Anor.* when he said, " ... the words in s. 34 are plain, clear, and precise. Reading the clear language of the section I am of the view that the section excludes the Court from exercising its supervisory function under the Arbitration Act 1952 or under any other written law ... in respect of arbitration held under the Rules of the Arbitration Centre." Accordingly, the argument of Counsel for the plaintiff fails.

[6] On the point that s. 25(2) of the Act should prevail over s. 34(1) of the Act, the Court cannot agree that the effect of s. 34(1) of the Act should be limited by s. 25(2) of the Act. The opening words "notwithstanding anything to the contrary in this Act or in any other written law" as found in s. 34(1) should dispel any notion that s. 25(2) of the Act has a restrictive effect upon it.

[7] There is no reason for the Court to resort to common law principles or its inherent jurisdiction when there are clear statutory provisions on the subject. The reliance upon the inherent jurisdiction of the Court will ultimately lead to the sources of powers of the Court such as the Courts of Judicature Act 1964 and the Rules of the High Court 1980. But these are also 'written laws' and come within the ambit of s. 34(1) of the Act.

[Preliminary objection allowed; plaintiff's application dismissed]

Cases referred to:

Klockner Industries-Anlagen GmbH v. Kien Tat Sdn. Bhd. & Anor. [1990] 3 MLJ 183 ***(foll)***

Soilchem Sdn. Bhd. v. Standard-Elektrik Lorenz AG [1993] 3 MLJ 68 ***(cit)***

Seloga Jaya Sdn. Bhd. v. Pembenaan Keng Ting (Sabah) Sdn. Bhd. [1994] 2 CLJ 716 ***(refd)***

Dalmia v. National Bank of Pakistan [1978] 2 Lloyd's Law Report 223-303 ***(cit)***

Heydon's Case [1584] 76 ER 637 ***(cit)***

Wah Bee Construction Engineering v. Pembenaan Fungsi Baik Sdn. Bhd. [1996] 3 CLJ 858 ***(cit)***

New India Assurance Company Ltd. v. Lewis [1967] 1 MLJ 156 FC ***(cit)***

Swee Pte. Ltd. v. Lim Kian Chai & Anor. [1983] 1 MLJ 353 ***(cit)***

Elf Petroleum S.E. Asia Pte. Ltd. v. Winelf Petroleum Sdn. Bhd. [1986] 1 MLJ 177 ***(cit)***
Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers' Union [1995] 2 CLJ 748 ***(cit)***
Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor. [1995] 3 MLJ 369 FC ***(cit)***
Lian Ann Lorry Transport & Forwarding Sdn. Bhd. v. Govindasamy [1982] 2 MLJ 232 ***(refd)***
Luggage Distributors (M) Sdn. Bhd. v. Tan Hor Teng @ Tan Tien Chi & Anor. [1995] 3 CLJ 520 ***(cit)***
Lou Chin Hei v. Public Prosecutor [1982] 1 MLJ 31 ***(cit)***
David Grant & Co. Pty Ltd. v. Westpac Banking Corporation [1996] 1 CLJ 129 ***(cit)***
Tengku Abdullah Ibni Sultan Abu Bakar v. Mohd Latiff bin Shah Mohd [1996] 2 MLJ 265 ***(refd)***

Legislation referred to:
Arbitration Act 1952, ss. 25(2), 34(1)
Arbitration Act 1950 [UK]
Civil Law Act 1956, s. 3
Courts of Judicature Act 1964
Federal Constitution, Art. 121
Rules of High Court 1980
Sarawak Arbitration Ordinance No. 5 1952

Other source referred to:
United Nations Commission on International Trade Law Arbitration Rules 1976, Articles 21(1), (3)

For the plaintiff - Jimmy Wee; M/s. Jimmy H.T. Wee & Co.
For the defendants - Victor Wong; M/s. Victor Wong & Chiew

JUDGMENT

Richard Malanjum J:

The Application

By Originating Summons dated 26 June 1996 (Encl. 2) and as amended pursuant to leave of the Court made on 19 August 1996, the plaintiff prays for the following orders: (verbatim),

(1) that pursuant to s. 25(2) of the Arbitration Act and/or under common law and/or under the inherent jurisdiction of this Honourable Court, the arbitration agreement set out in clause 28(6) of Part 2 of the conditions incorporated into an agreement entered into between the plaintiff and the abovenamed 1st, 2nd and 3rd defendants shall cease to have effect;

(2) that pursuant to s. 25(2) of the Arbitration Act leave be granted to revoke or suspend the appointment and authority of W.S.W. Davidson, the Arbitrator appointed by the 1st, 2nd and 3rd defendants under the said agreement;

(3) Costs of and incidental to this Originating Summons may be paid by the 1st, 2nd and 3rd defendants;

(4) Such other order/relief as this Honourable Court shall deem fit.

The application was supported by the affidavit of Mr. Gerawat Gala, the Legal Advisor of the plaintiff sworn to on 25 June 1996. A second affidavit in support was also sworn to on 9 August 1996 and filed by the same deponent.

The defendants opposed the application and had filed an affidavit in opposition (Encl. 5) deposed to by Mr. Thomas Alexander Green, whose designation was described as the Deputy Project Manager. A supplementary affidavit (Encl. 8) by the same deponent was also sworn to on 18 July 1996 and filed herein.

The Undisputed Facts

In early 1994 Contract 588116 ('the contract') was entered into between the plaintiff and the defendants, which were collectively working on a joint-venture basis. Pursuant to that contract the defendants were expected to construct for the plaintiff what was known as the Bintulu Onshore Facilities Expansion Project ('the project'). The project consisted of, *inter alia*, the construction of a slug-catcher, receiving facilities, two on-shore 36-inch pipelines and stabilisation plant. The initial lump sum contract price for the project was RM127,091,129.05. After an extension was given it was finally completed on 31 January 1996. The price was also revised to RM243 million and had been paid to the defendants. However, that was not the end of the matter. The defendants proceeded to make an additional claim of RM125,507,761. That was disputed by the plaintiff. As a result the defendants issued a notice of arbitration pursuant to clause 28(6) part 2 of the conditions of the contract and served on the plaintiff. They also filed a copy of the same and their statement of claim with the Kuala Lumpur Regional Centre for Arbitration ('the centre'). And the defendants had since appointed their arbitrator, namely, Mr. W.S.W. Davidson.

For convenience, clause 28(6) of the contract is reproduced. It reads:

> The **company** and the **contractor** hereby agreed that any dispute which may arise in connection with the activities contemplated in the **contract** on the application, implementation, validity, breach or termination of the **contract** or any provision thereof (whether resulting from a claim in contract, tort or otherwise) shall be finally and exclusively settled in accordance with the **UNCITRAL** (United Nations Commission on International Trade Law) Arbitration Rules as applied by the Regional Centre of Arbitration at Kuala Lumpur, Malaysia. The place of arbitration

shall be the Regional Centre for Commercial Arbitration, Kuala Lumpur. The number of arbiters shall be three (3) and the third arbitrator shall always be a suitably qualified and experienced lawyer.

Meanwhile, paras. 65 and 66 of the statement of claim read:

65. In breach of the contract, the respondent held meetings with the claimant's subcontractors implying that the contract between the respondent and the claimant was to be terminated and that the subcontractor would be asked to take over the claimant's work. This has resulted, *inter alia*, in the subcontractor resisting the claimant's management and thereby giving rise to disruption of work and extra costs to the claimant. Claimant's bundle C6.18.

66. Further, the respondent advised the claimant's bank that the respondent was about to terminate the contract with the claimant. Upon which the claimant's bank froze the claimant's account and thereby preventing the claimant from meeting their payments to their subcontractors and suppliers. Claimant's bundle C6.18.

The Preliminary Objection

Basically, the application of the plaintiff hinges on s. 25(2) of the Arbitration Act 1952 ('the Act') and/or the common law and/or the inherent jurisdiction of the Court. But a preliminary objection was raised by the defendants. I shall first deal with this objection before going into the merit of the application, if necessary.

In raising the preliminary objection learned Counsel for the defendants referred to s. 34(1) of the Act and the judicial pronouncements of the Malaysian Courts on the issue. Specifically the cases of *Klockner Industries-Anlagen GmbH v. Kien Tat Sdn. Bhd. & Anor.* [1990] 3 MLJ 183 and *Soilchem Sdn. Bhd. v. Standard-Elektrik Lorenz AG* [1993] 3 MLJ 68 were cited. It was the contention of learned Counsel that in view of the section and its interpretation this Court has no jurisdiction to hear the present application. He went on to submit that Arts. 21(1) and 21(3) of the United Nations Commission on International Trade Law Arbitration Rules 1976 ('UNCITRAL rules') should provide the forum and mode for the plaintiff to present its grievances but not the Malaysian Courts. It was further submitted that parties to an agreement should be held to their bargain. The case of *Seloga Jaya Sdn. Bhd. v. Pembenaan Keng Ting (Sabah) Sdn. Bhd.* [1994] 2 MLJ 97; [1994] 2 CLJ 716 was referred to. More so in this case, learned Counsel said, where the agreement was prepared by the plaintiff case the *contra proferentum* rules should apply.

In respect of the inherent jurisdiction of the Court it was argued on behalf of the defendants that it should not be allowed to nullify or stultify the clear provision of the Act.

As regards paras. 65 and 66 of the statement of claim learned Counsel for the defendants submitted that they do not necessarily imply improper conduct or conspiracy. And by asking the Court to invoke its power pursuant to s. 25(2) of the Act that would tantamount to requesting the Court to exercise its supervisory function which should not be permissible under s. 34(1) of the same Act.

For the plaintiff, learned Counsel submitted three reasons why s. 34(1) should not be applied in this case. First, learned Counsel said that s. 34(1) of the Act could not be applied when fraud or conduct akin to fraud as defined under s. 25(2) of the same Act had been alleged. Secondly, the word "arbitration" in s. 34(1) should be given a restricted interpretation. And thirdly, s. 34 only excludes the supervisory function of the Court under the Act or any other written law but it does not deprive a party from seeking the aid of the Courts to enable it to avail itself of any common law right it may be entitled to.

On the first reason learned Counsel argued that the present application would not involve the exercise of supervisory function by the Court unlike the situation in *Klockner's* case *(supra)*. The application is for an order that the arbitration agreement shall cease to have effect. And if the order is granted that should be the end of any arbitration proceeding. The UNCITRAL Rules and the rules of the Centre would also be irrelevant. And even if Art. 21 of the UNCITRAL Rules applies it has been held that the power of the arbitrator to decide on the question of jurisdiction is not final but subject to review. The case of *Dalmia v. National Bank of Pakistan* [1978] 2 Lloyd's Law Report 223-303 was cited.

Learned Counsel also added but unsupported by any authority that where a party has been alleged to have acted fraudulently or acted in a way akin to fraud, he should be entitled as a matter of absolute right to have the matter tried in open Court before a Judge.

In respect of the second reason learned Counsel contended that the word 'arbitration' in s. 34(1) should only be confined to an arbitration which had been properly referred to the Centre. In the present case, in view of the allegation of conspiracy and improper conduct, such a matter is not fit for trial before an arbitrator but before a High Court Judge.

In addition, learned Counsel said that there is a presumption against the ousting of the Court's jurisdiction unless it is very clear in a statute. Similarly there is also a presumption against interfering with a citizen's right of access to the Court unless expressly stated otherwise in a statute.

Other points raised by learned Counsel in support of the second reason were:

(a) there is a contradiction between s. 34 and s. 25 as regards the power of the Court. Since there is a doubt it should be interpreted in favour of the plaintiff;

(b) that s. 25(2) although earlier enacted is specific in nature whilst s. 34 is general and makes no reference to the specific subject. As such the earlier provision with specific terms should prevail over the later provision with general terms; and

(c) that the Centre only deals with dispute of an international character, that is to say, the parties belong to or are residents in two different jurisdictions or the dispute involves international commercial interest. In the present case the parties are Malaysian companies and under one jurisdiction, i.e. Malaysia. Moreover, nothing was shown by the defendants that the facts of this case satisfy the application of s. 34(1).

In further contending for the third reason, learned Counsel said that s. 34 did not oust the inherent jurisdiction of the Courts. And he added that Courts of other jurisdictions, particularly the English Courts, had granted relief to parties accused of fraud by staying arbitration proceedings even without specific statutory provision. Learned Counsel also said that it would enable other affected parties accused of conspiracy and improper conduct to defend themselves if the matter is brought before the Court.

In concluding, learned Counsel for the plaintiff went on to state that he was not saying that clause 28(6) should be ignored entirely. But it should not be binding in all cases and circumstances. Where there is an allegation of fraud and improper conduct s. 25(2) should apply.

Before considering the points raised in connection with the preliminary objection perhaps it is appropriate to reproduce here the statutory provisions in issue.

Section 25(2) of the Act reads:

25(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration, and a dispute which so arises involves the question whether any such party has been guilty of fraud, the High Court shall, so far as may be necessary to enable that question to be determined by the High Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

And s. 34 of the Act reads:

34(1) Notwithstanding anything to the contrary in this Act or in any other written law but subject to subsection (2) in so far as it relates to the enforcement of an award, the provisions of this Act or other written law shall not apply to any arbitration held under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965 or under the United Nations Commission on International Trade Law Arbitration Rules 1976 and the Rules of the Regional Centre for Arbitration at Kuala Lumpur.

(2) Where an award made in an arbitration held in conformity with the convention or the Rules specified in subsection (1) is sought to be enforced in Malaysia, the enforcement proceedings in respect thereof shall be taken in accordance with the provisions of the Convention specified in subsection (1) or the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, as may be appropriate.

(3) The competent Court for the purpose of such enforcement shall be the High Court.

It is not in dispute that s. 34 was enacted in 1980 when the Act was amended *vide* Act A 478/1980. Whereas s. 25 has been in the Act since 1952 when the Act was then known as the Sarawak Arbitration Ordinance No. 5 of 1952. The ordinance was modelled after the Arbitration Act 1950 of the United Kingdom. On the 1 November 1972 the Ordinance was adopted as the Act for the whole country.

Now, upon reading the application it is obvious that the plaintiff, *inter alia,* is seeking for an order from the Court based on s. 25(2) of the Act. In short, a provision of the Act is being invoked. But on the literal interpretation of s. 34(1) it expressly excludes the application of any of the provisions of the Act in **any arbitration** held under the Convention as stipulated therein or the UNCITRAL Rules and the Rules of the Centre. Emphasis should be given to the words "any arbitration". There is no exception or qualification given such as the requirement for a dispute to be of international commercial interest or that the parties must be residents of two different jurisdictions. And in the present case it is very clear that clause 28(6) of the contract stipulates the governing rules and the place of arbitration, namely, the UNCITRAL Rules as applied by the Centre and to be held in Kuala Lumpur. Thus, upon reading clause 28(6) it is apparent that s. 34(1) is applicable and hence it is plain that s. 25(2) should be excluded. There is therefore no merit to say that the defendants had failed to show facts which could satisfy s. 34(1). After all clause 28(6) is very clear and s. 34(1) has no ambiguity. Hence, there is no necessity for additional qualifying facts to be shown. No doubt in the introduction booklet of the Centre *proviso* as to the nature of disputes which the Centre would deal were stipulated. However, such *proviso* appear to be not in consonant with the wordings of s. 34(1). Further, there is nothing from the materials before me indicating the historical background of s. 34 which should be considered in interpreting it. (See: *Heydon's Case* [1584] 76 ER 637).

Learned Counsel for the plaintiff attempted to make a distinction between the supervisory function of the Court and the present application. He seems to think that s. 34(1) only covers the supervisory function of the Court and that the present application does not come within the ambit of supervisory function. Perhaps he was convinced of the validity of the argument due to the usage of the term "supervisory function" in *Klockner's* case *(supra)*. But there are at least two weaknesses in the argument.

Firstly, it fails to appreciate the wordings of s. 34(1). As stated earlier, the provisions of the Act are excluded in any arbitration held under the Convention or the UNCITRAL Rules and Rules of the Centre. And if the provisions are excluded that should include s. 25(2). Therefore, the question as to the nature of the Court's function under s. 25(2) does not arise. Secondly, there is nothing in s. 34(1) or in the whole Act implying the different functions of the Court towards arbitration proceedings. Indeed in *Klockner's* case *(supra)* the issues of *locus standi* and capacity were presented to the Court for determination. They involved interpretation of an article in the debenture and the relevant provisions in the Companies Act. Yet his Lordship Zakaria Yatim J (as he then was) declined to grant the relief prayed for. Hence, the term "supervisory function" used in *Klockner's* case *(supra)* should therefore include such function as envisaged by s. 25(2). Incidentally, I do not think the issues in *Klockner's* case *(supra)* were merely procedural matters as contended by learned Counsel for the plaintiff herein.

As regards the argument that the word "arbitration" in s. 34(1) should be given a restricted meaning, with respect, I cannot agree. Whether or not an arbitration has been properly referred to the Centre should initially depend on the terms of the arbitration clause itself. After all it is beyond question that an agreement to arbitrate is to be treated on no different footing from any other contract. (See: *Wah Bee Construction Engineering v. Pembenaan Fungsi Baik Sdn. Bhd.* [1996] 2 AMR 2412; [1996] 3 CLJ 858). (See also: *New India Assurance Company Ltd. v. Lewis* [1967] 1 MLJ 156 FC; *Swee Pte. Ltd. v. Lim Kian Chai & Anor.* [1983] 1 MLJ 353; *Elf Petroleum S.E. Asia Pte. Ltd. v. Winelf Petroleum Sdn. Bhd.* [1986] 1 MLJ 177).

Further, to say that the reference to the Centre in this case has become irregular due to the allegations of conspiracy and improper conduct and thus s. 25(2) applies would tantamount to circumventing the effect of s. 34(1). If s. 34(1) applies in the first place then there is no longer any question of referring to the other provisions of the Act.

On the issue of the presumption against ousting the jurisdiction of the Courts unless clearly stipulated in a statute and the presumption against interfering with citizen's right of access to the Courts, such argument at first seems persuasive. More so, in view of the apparent trend of our Courts recently in allowing judicial review if there is an error of law regardless of how wide an ouster clause may have been drafted. (See: *Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers' Union* [1995] 2 MLJ 317 CA; [1995] 2 CLJ 748 and , approved in *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor.* [1995] 3 MLJ 369 FC). Indeed in *Lian Ann Lorry Transport & Forwarding Sdn. Bhd. v. Govindasamy* [1982] 2 MLJ 232 Salleh Abas FJ (as he then was) expressed the view that it would be

unconstitutional as it would be contrary to Art. 121 of the Federal Constitution if an Act were to arrogate the interpretation of a statutory provision to another body other than to the Courts.

However, after anxious consideration on the issue I have no hesitation to agree with his Lordship Zakaria Yatim J in *Klockner's* case *(supra)* when he said this at p. 185:

> ... the words in s. 34 are 'plain, clear and precise'. Reading the clear language of the section I am of the view that the section excludes the Court from exercising its supervisory function under the Arbitration Act 1952 or under any other written law ... in respect of arbitrations held under the Rules of the Arbitration Centre.

Accordingly that aspect of the argument of the learned Counsel for the plaintiff fails. And with that the assertion of doubt due to contradiction existing between s. 25(2) and s. 34(1) also fails.

On the point that s. 25(2) should prevail over s. 34(1) as the former is specific in nature, this argument seems to be the converse, though it may also be correct, of the generally accepted canon of construction whereby if a general term in a statute is followed by a more specific term then the latter prevails. Such rule of construction is expressed in the maxim: *'generalibus specialia derogant'*. (See: *Luggage Distributors (M) Sdn. Bhd. v. Tan Hor Teng @ Tan Tien Chi & Anor*. [1995] 1 MLJ 719; [1995] 3 CLJ 520; *Lou Chin Hei v. Public Prosecutor* [1982] 1 MLJ 31; *David Grant & Co. Pty. Ltd. v. Westpac Banking Corporation* [1996] 1 CLJ 129). However, it is also a general precept that "it is inappropriate to read provisions which confer jurisdiction ... by the making of implications or imposition of limitations not found in the express words of the legislative provision" per Gummow J in *David Grant's* case *(supra)*. Hence, in view of the general nature of s. 34(1) and being the later provision, I cannot agree that its effect should be limited by s. 25(2). Indeed the opening words "notwithstanding anything to the contrary in this Act or in any other written law" as found in s. 34(1) should dispel any notion that s. 25(2) has a restrictive effect upon it.

Finally, in respect of the reference to common law and/or the inherent jurisdiction of the Court to grant the order prayed for, I also find it to be without any merit.

Firstly, there is no reason for the Court to resort to common law principles or its inherent jurisdiction when there are clear statutory provisions on the subject. (See: Civil Law Act 1956, s. 3). And the common law referred to by the learned Counsel for the plaintiff could only mean the English common law. However, the judicial trend of our Courts nowadays is not to follow the common law of foreign jurisdictions slavishly. In *Tengku Abdullah Ibni Sultan Abu Bakar v. Mohd Latiff bin Shah Mohd* [1996] 2 MLJ 265, his Lordship Gopal Sri Ram JCA said this at p. 309:

> ... While we may refer to the decisions of Courts of those jurisdictions where the law is akin to our own, we must therefore ultimately have regard to the words of our own statute.

Secondly, the reliance upon the inherent jurisdiction of the Court will ultimately lead to the sources of powers of the Court such as the Courts of Judicature Act 1964 and the High Court Rules 1980. But these are also 'written laws' and come within the ambit of s. 34(1) of the Act.

As for the arguement that third partise affected should be given the oppurtunity to defend themselves over the allegation, I think they should be allowed to decide what course to take. But their predicament, if any, should not be a reason to circumvent the clear provision of s. 34(1).

Conclusion

For the foregoing reasons that I should therefore sustain preliminary objection. Accordingly, there is no necessity consider the implications of paras. 65 and 66 of the statement of claim in relation to s. 25(2) as this Court has no jurisdiction to deal with the issue in view of s. 34(1) of the Act. The inevitable conclusion is that I should dismiss the present application with costs to the defendants to be taxed unless agreed.

Reported by Cindy Chan